

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, September 1, 2021

Hearing Room 302

9:00 AM

1:00-00000

Chapter

#0.00 This calendar will be conducted remotely, using ZoomGov video and audio.

Parties in interest and members of the public may connect to the video and audio feeds, free of charge, using the connection information provided below.

Individuals may participate by ZoomGov video and audio using a personal computer (equipped with camera, microphone and speaker), or a handheld mobile device (such as an iPhone or Android phone). Individuals may opt to participate by audio only using a telephone (standard telephone charges may apply).

Neither a Zoom nor a ZoomGov account is necessary to participate and no pre-registration is required. The audio portion of each hearing will be recorded electronically by the Court and constitutes its official record.

Video/audio web address: <https://cacb.zoomgov.com/j/1611837846>

Meeting ID: 161 183 7846

Password: 188456

Dial by your location: 1 -669-254-5252 OR 1-646-828-7666

Meeting ID: 161 183 7846

Password: 188456

Docket 0

Tentative Ruling:

- NONE LISTED -

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, September 1, 2021

Hearing Room 302

9:30 AM

1:18-10143 Mayra Hernandez

Chapter 13

#1.00 Motion for relief from stay

U.S. BANK TRUST NATIONAL ASSOC.

fr. 6/2/21; 7/28/21

Docket 67

***** VACATED *** REASON: VACATED PER APO**

Tentative Ruling:

VACATED PER APO

NO APPEARANCE REQUIRED

Party Information

Debtor(s):

Mayra Hernandez

Represented By
Donald E Iwuchuku

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, September 1, 2021

Hearing Room 302

9:30 AM

1:19-10565 Pamela M. Sorenson

Chapter 13

#2.00 Motion for relief from stay

WILMINGTON TRUST NATIONAL ASSO.

fr. 11/18/20, 12/16/20, 2/24/21, 4/28/21; 5/5/21,
6/30/21

Docket 51

Tentative Ruling:

This matter was continued by stipulation from June 30, 2021 because Movant was "pending completion of the tax bill cancellation." Nothing has been filed since the continued hearing. What is the status of this RFS motion?

Appearance Required.

PREVIOUS TENTATIVE BELOW

Petition Date: 03/11/2019

Chapter 13 plan confirmed: 7/22/19

Service: Proper. Opposition filed.

Property: 11052 Reseda Blvd., Northridge, CA 91326

Property Value: 582,000.00 (per debtor's schedules) (Property is owned in Tenancy in Common... Debtor's portion is \$145,000.00).

Amount Owed: \$358,890.82 (per Movant's papers)

Equity Cushion: 38.33%

Equity: \$223,109.18

Post-Petition Delinquency: \$ 6,419.86 (3 payments of \$2,323.05 less suspense \$549.29)

Movant requests relief under 11 U.S.C. 362(d)(1), with the specific relief requested in paragraphs 2 (proceed under non-bankruptcy law); 3 (Movant permitted to engage in loss mitigation activities); 3 (option to enter into forbearance agreement, loan modification, refinance agreement); 6 (relief from co-debtor stay); and 7 (waiver of the 4001(a)(3) stay). Movant asserts there are grounds for relief from the stay because the Debtor has failed to

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, September 1, 2021

Hearing Room 302

9:30 AM

CONT...

Pamela M. Sorenson

Chapter 13

make postpetition payments. Movant alleges that the Debtor has only made partial payments for the months of August, September and October 2020.

The Debtor opposes this motion because the Debtor believes that the property was wrongfully reassessed by the LA County Assessor's Office. Debtor claims that there is \$390,000.00 in equity in the property.

Whether the Court applies the numbers provided by the Debtor's schedules and movant's papers or the Debtor's adjusted figures, there appears to be a substantial amount of equity in the property. Have the parties discussed entering into an APO?

Appearance Required.

Party Information

Debtor(s):

Pamela M. Sorenson

Represented By
Michael D Luppi

Movant(s):

Wilmington Trust, National

Represented By
Darlene C Vigil

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, September 1, 2021

Hearing Room 302

9:30 AM

1:19-12112 Deborah Rose Sanders

Chapter 13

#3.00 Motion for relief from stay

PNC BANK, NATIONAL ASSOCIATION

fr. 6/16/21; 7/28/21

Docket 104

***** VACATED *** REASON: Resolved per APO (doc. 113) - hm**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Deborah Rose Sanders

Represented By
Kevin T Simon

Movant(s):

PNC Bank, National Association, its

Represented By
Nancy L Lee

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, September 1, 2021

Hearing Room 302

9:30 AM

1:20-10991 Larry D Miller and Gloria J Miller

Chapter 13

#4.00 Motion for relief from stay

LOANDEPOT.COM, LLC

fr. 6/2/21, 6/30/21; 7/28/21

Docket 27

***** VACATED *** REASON: Resolved per APO (doc. 36) - hm**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Larry D Miller

Represented By
Tom A Moore

Joint Debtor(s):

Gloria J Miller

Represented By
Tom A Moore

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, September 1, 2021

Hearing Room 302

10:00 AM

1:16-11795 Juan Rocha

Chapter 13

#5.00 Motion for relief from stay

DEUTSCHE BANK NATIONAL TRUST CO.

Docket 82

Tentative Ruling:

Petition Date: 6/17/2016
Ch. 13 plan confirmed: 4/17/2017
Service: Proper. No opposition filed.
Property: 10928 Walnut Dr., Sunland, CA 91040
Property Value: \$638,210 (per debtor's schedules)
Amount Owed: \$359,911
Equity Cushion: 36.0%
Equity: \$227,242.20
Post-Petition Delinquency: \$7,992.85 (3 payments of \$3,805.83, less
suspense balance of \$3,424.64)

Movant requests relief under 11 U.S.C. 362(d)(1), with the specific relief requested in paragraphs 2 (proceed under non-bankruptcy law); 3 (Movant permitted to engage in loss mitigation activities); and 7 (waiver of the 4001(a) (3) stay). Movant believes cause exists for lifting the stay because the Debtor has missed several postpetition payments. Movant asserts that the last payment received on 5/24/2021.

Debtor opposes the Motion, contending that he is current on his mortgage payments. Attached to Debtor's declaration in support is a list payments made to specific agents at Select Portfolio Services, including dates and confirmation numbers.

Is Debtor's evidence sufficient for Movant to withdraw this Motion?

Appearance Required.

Party Information

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, September 1, 2021

Hearing Room 302

10:00 AM

CONT... Juan Rocha

Chapter 13

Debtor(s):

Juan Rocha

Represented By
Tawni Takagi

Movant(s):

Deutsche Bank National Trust

Represented By
Kristin A Zilberstein
Merdaud Jafarnia
Nancy L Lee
Kristin A Schuler-Hintz
Jennifer C Wong

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, September 1, 2021

Hearing Room 302

10:00 AM

1:20-10479 Lisa Ann Celaya

Chapter 13

#6.00 Motion for relief from stay

NISSAN-INFINITI LT

Docket 33

Tentative Ruling:

Petition Date: 2/28/2020

Ch. 13 plan confirmed: 6/2/2020

Service: Proper. No opposition filed.

Property: 2018 Nissan Murano

Property Value: \$0 (LEASE, per debtor's schedules)

Amount Owed: \$17,083.60

Equity Cushion: n/a

Equity: n/a

Post-Petition Delinquency: \$17,083 (\$126.40 in payment arrears; \$16,957.20 delinquent for lease purchase option)

Disposition: GRANT under 11 U.S.C. 362(d)(1) . GRANT relief requested in paragraph 2 (proceed under applicable non-bankruptcy law) and 6 (waiver of 4001(a)(3) stay).

NO APPEARANCE REQUIRED—RULING MAY BE MODIFIED AT HEARING.

MOVANT TO LODGE ORDER WITHIN 7 DAYS.

Party Information

Debtor(s):

Lisa Ann Celaya

Represented By
Jeffrey N Wishman

Movant(s):

Nissan-Infiniti LT, as serviced by

Represented By
Kirsten Martinez

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, September 1, 2021

Hearing Room 302

10:00 AM

CONT... Lisa Ann Celaya

Chapter 13

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, September 1, 2021

Hearing Room 302

10:00 AM

1:21-10716 Marta Alicia Penate

Chapter 7

#7.00 Motion for relief from stay

KINECTA FEDERAL CREDIT UNION

Docket 8

Tentative Ruling:

Petition Date: 4/21/21

Ch: 7

Service: Proper. No opposition filed.

Property: 2013 Toyota Tacoma

Property Value: \$8,000 (per Movant's evidence, NADA Guide)

Amount Owed: \$7,615.10

Equity Cushion: 4.81%

Equity: \$384.90.

Delinquency: \$1,007.50 (approx. 3 payments of \$325.00)

Disposition: GRANT under 11 U.S.C. 362(d)(1) and (d)(2). GRANT relief requested in paragraph 2 (proceed under applicable non-bankruptcy law) and 6 (waiver of 4001(a)(3) stay).

NO APPEARANCE REQUIRED—RULING MAY BE MODIFIED AT HEARING.

MOVANT TO LODGE ORDER WITHIN 7 DAYS.

Party Information

Debtor(s):

Marta Alicia Penate

Represented By
Daniel F Jimenez

Movant(s):

KINECTA FEDERAL CREDIT

Represented By
Mark S Blackman

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, September 1, 2021

Hearing Room 302

10:00 AM

CONT... Marta Alicia Penate

Chapter 7

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, September 1, 2021

Hearing Room 302

10:00 AM

1:21-11156 Maria Rosales

Chapter 13

#8.00 Motion for relief from stay

WILMINGTON TRUST, NATIONAL ASSO.

Docket 23

Tentative Ruling:

Petition Date: 7/2/2021

Ch. 13

Service: Proper. No opposition filed.

Property: 19125 Olympia St., Northridge, CA 91326

Property Value: \$850,000 (per debtor's Motion to Continue Automatic Stay, doc. 10)

Amount Owed: \$1,194,974

Equity Cushion: 0.0%

Equity: \$0.00.

Post-Petition Delinquency: none asserted; Movant notes that a payment of \$3,609.44 will come due on 8/1/2021.

Movant alleges cause for relief under 362(d)(4) due to multiple bankruptcies by this Debtor affecting, the subject property. Movant argues that it has not received regular monthly payments, and has unfairly delayed from proceeding with the foreclosure of the subject Property. Movant notes that the loan is in longstanding material default, contractually due for the November 1, 2018 monthly mortgage payment, and no payments have been received since March 31, 2020.

Movant alleges further cause exists to terminate the automatic stay under 11 U.S.C. §362(d)(4) because Movant submits Debtor's bankruptcy filing is part of a scheme, the object of which is to delay, hinder or otherwise seek to interfere with Movant's ability to enforce its state law remedies. Movant notes that the current bankruptcy was filed as a skeletal filing on the eve of a foreclosure sale and is the fifth bankruptcy affecting the Property since October 17, 2013. Movant argues that Debtor's filing history demonstrates grounds for *in rem* relief because the filing is another scheme affecting the

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, September 1, 2021

Hearing Room 302

10:00 AM

CONT... **Maria Rosales**
Property.

Chapter 13

Debtor's Motion to Continue the Automatic Stay was granted on July 28, 2021; Order entered thereon on August 15, 2021. In the Order Granting Motion to Continue Stay, the parties included in the Adequate Protection attachment provisions requiring Debtor to make regular monthly payments in the amount of \$3,609.44, the first due on August 1, 2021 (the "APO"). Secured creditor did not file a declaration re default, as required by the terms of the APO. Instead, this motion for relief from stay was filed on July 29, 2021, three days before the first regular payment under the APO was due. The Motion before the Court is, presumably, focused on Secured Creditor's allegations of bad faith as grounds for relief under 362(d)(4).

Does Debtor have a response to Secured Creditor's allegations of grounds for relief under 362(d)(4) re bad faith?

APPEARANCE REQUIRED

Party Information

Debtor(s):

Maria Rosales

Represented By
Joshua L Sternberg

Movant(s):

Wilmington Trust, National

Represented By
Darlene C Vigil

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, September 1, 2021

Hearing Room 302

10:00 AM

1:21-11244 Edson Josue Roman

Chapter 7

#9.00 Motion for relief from stay

HONDA LEASE TRUST

Docket 11

Tentative Ruling:

Petition Date: 7/23/21

Ch: 7

Service: Proper. No opposition filed.

Property: 2020 Honda Civic

Property Value: \$21,200 (per Movant's evidence - JD Power Used Cars)

Amount Owed: \$19,215.72

Equity Cushion: n/a (LEASE)

Equity: n/a (LEASE)

Delinquency: \$792.36 (three payments of \$264.12)

Movant alleges that the last payment received was on or about 5/4/2021

Disposition: GRANT under 11 U.S.C. 362(d)(1) and (d)(2). GRANT relief requested in paragraph 2 (proceed under applicable non-bankruptcy law) and 6 (waiver of 4001(a)(3) stay).

NO APPEARANCE REQUIRED—RULING MAY BE MODIFIED AT HEARING.

MOVANT TO LODGE ORDER WITHIN 7 DAYS.

Party Information

Debtor(s):

Edson Josue Roman

Pro Se

Movant(s):

HONDA LEASE TRUST

Represented By
Vincent V Frounjan

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, September 1, 2021

Hearing Room 302

10:00 AM

CONT... Edson Josue Roman

Chapter 7

Trustee(s):

David Seror (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, September 1, 2021

Hearing Room 302

10:30 AM

1:20-11601 Andrea Ricci and Tonya Crooks

Chapter 13

#10.00 Motion for relief from stay

ASHLEY HENSARLING

fr. 12/9/20, 12/16/20, 4/7/21

Docket 24

Tentative Ruling:

Tentative Ruling: The Court partially granted RFS so that discovery could proceed in the State Court and the Adversary Proceeding against Debtor. The Court conducted a hearing on April 7, 2021, at which point the parties informed the Court they were working out a possible stipulation/protective order for documents and that the state court trial was scheduled was tentatively scheduled for mid-October. What is the status of this case?

Appearance required.

Party Information

Debtor(s):

Andrea Ricci

Represented By
Robert M Aronson

Joint Debtor(s):

Tonya Crooks

Represented By
Robert M Aronson

Movant(s):

Ashley Hensarling

Represented By
Alberto J Campain

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, September 1, 2021

Hearing Room 302

10:30 AM

1:20-11601 Andrea Ricci and Tonya Crooks

Chapter 13

#11.00 Motion for relief from stay

BROWGAL, LLC

fr. 12/9/20, 12/16/20, 4/7/21

Docket 25

Tentative Ruling:

Tentative Ruling: The Court partially granted RFS so that discovery could proceed in the State Court and the Adversary Proceeding against Debtor. The Court conducted a hearing on April 7, 2021, at which point the parties informed the Court they were working out a possible stipulation/protective order for documents and that the state court trial was scheduled was tentatively scheduled for mid-October. What is the status of this case?

Appearance required.

Party Information

Debtor(s):

Andrea Ricci

Represented By
Robert M Aronson

Joint Debtor(s):

Tonya Crooks

Represented By
Robert M Aronson

Movant(s):

Browgal, LLC

Represented By
Alberto J Campain

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, September 1, 2021

Hearing Room 302

10:30 AM

1:20-11601 Andrea Ricci and Tonya Crooks

Chapter 13

#12.00 Motion for relief from stay

SANDRA HENSERLING

fr. 12/9/20, 12/16/20, 4/7/21

Docket 26

Tentative Ruling:

Tentative Ruling: The Court partially granted RFS so that discovery could proceed in the State Court and the Adversary Proceeding against Debtor Crooks. What is the status of discovery? Is further relief from stay required?

Apperance Required

Party Information

Debtor(s):

Andrea Ricci

Represented By
Robert M Aronson

Joint Debtor(s):

Tonya Crooks

Represented By
Robert M Aronson

Movant(s):

Sandra Hensarling

Represented By
Alberto J Campain

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, September 1, 2021

Hearing Room 302

10:30 AM

1:20-11984 Lindsay Marie Pacifico

Chapter 7

#13.00 Motion for relief from stay

BROWGAL LLC

fr. 12/16/20, 4/7/21

Docket 15

Tentative Ruling:

Apperance Required.

Party Information

Debtor(s):

Lindsay Marie Pacifico

Represented By
Navid Kohan

Movant(s):

Browgal, LLC

Represented By
Alberto J Campain

Trustee(s):

Diane C Weil (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, September 1, 2021

Hearing Room 302

10:30 AM

1:20-11984 Lindsay Marie Pacifico

Chapter 7

#14.00 Motion for relief from stay

SANDRA HENSARLING

fr. 12/16/20, 4/7/21

Docket 16

Tentative Ruling:

Apperance Required.

Party Information

Debtor(s):

Lindsay Marie Pacifico

Represented By
Navid Kohan

Movant(s):

Sandra Hensarling

Represented By
Alberto J Campain

Trustee(s):

Diane C Weil (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, September 1, 2021

Hearing Room 302

10:30 AM

1:20-11984 Lindsay Marie Pacifico

Chapter 7

#15.00 Motion for relief from stay

ASHLEY HENSARLING

fr. 12/16/20, 4/7/21

Docket 17

Tentative Ruling:

Apperance Required.

Party Information

Debtor(s):

Lindsay Marie Pacifico

Represented By
Navid Kohan

Movant(s):

Ashley Hensarling

Represented By
Alberto J Campain

Trustee(s):

Diane C Weil (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, September 1, 2021

Hearing Room 302

10:30 AM

1:20-12023 Gregory Scott Caul and Amber Marie Caul

Chapter 7

#16.00 Debtors' Motion for Intentional Violation of the Automatic Stay Against Tian Wang and Charles Zhang; Request for Attorney Fees in the Amount of \$5,000.00 and Punitive Damages in the Amount of \$5,000.00

Docket 60

Tentative Ruling:

On November 11, 2020, the Debtors filed the instant case under Chapter 13 of the Bankruptcy Code. The case was converted on March 3, 2021. At the time of the petition date, the Debtor was involved in an unlawful detainer action with their landlords Charles Zhang and Tian Ping Wang ("Creditors"). The state court entered judgment in favor of the Creditors on November 18, 2021. The judgment ultimately was vacated after it became clear the Debtors filed for bankruptcy.

The Creditors were properly listed on the Debtors' mailing matrix and the Court sent out a notice of service to Creditors' state court counsel on the petition date. Dkt. No. 60 Debtors' Exhibit B. Parties seems to contest precisely when the Creditors became aware of the bankruptcy filing; however, Creditors' state court counsel received additional notice of the Debtors' bankruptcy on November 23, 2020. Dkt. No. 60 Debtors' Exhibit B. On December 11, 2020, the Creditors moved for relief of stay to commence an unlawful detainer action. The Court granted the motion and entered an order January 14, 2021. The order provides:

Movant may enforce its remedies to obtain possession of the Property, including lockout, in accordance with applicable nonbankruptcy law, **but may not pursue any monetary claim against the Debtor or property of the estate for amounts attributable to the period before the bankruptcy was filed except by filing a proof of claim pursuant to 11 U.S.C. § 501. (emphasis added).**

The Debtors vacated the property in February 2021.

Around the beginning of December 2020, the Creditors began to email the

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, September 1, 2021

Hearing Room 302

10:30 AM

CONT... Gregory Scott Caul and Amber Marie Caul

Chapter 7

Debtors regarding their delinquent rent payments and provided the Debtors with a 15-day Notice to pay or quit. Dkt. No 60, Debtors' Exhibit C. Creditors continued to email the Debtors regarding their delinquent payments up until March 28, 2021. Dkt. No 60, Debtor's Exhibit I. Debtors' counsel responded to the Creditors on several occasions informing them that the emails they were sending the Debtors violated the automatic stay. Debtors move for sanctions against the Creditors for violating the automatic stay. The Creditors oppose the motion.

Standard:

Section 362 codifies the automatic stay. The purpose of the automatic stay is "to protect debtors from all collection efforts while they attempt to regain their financial footing." Schwartz v. United States (In re Schwartz), 954 F.2d 569, 571 (9th Cir. 1992). Pursuant to 11 U.S.C. § 362(a)(2) & (3), the stay is applicable to all entities of "the enforcement against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title" and "any act to obtain possession of property of the estate or of property from the estate or to exercises control over property of the estate."

Section 362(k) provides "an individual injured by any willful violation of the stay provided by this section shall recover actual damages, including costs and attorney fees, and, in appropriate circumstances, may recover punitive damages." To be actionable, a violation of the automatic stay must be "willful." In re Bloom, 875 F.2d 224, 227 (9th Cir. 1989). The test for willful violation under § 362(k), that the creditor knew of the stay, and (2) the creditor's actions which violated the stay were intentional. Eskanos & Adler v. Roman (In re Roman), 283 B.R. 1, 8 (9th Cir. BAP 2002). No specific intent is required; a good faith belief that the conduct in question does not violate the stay is not relevant to whether the act was willful or whether damages must be awarded. In re Peralta, 317 B.R. 381, 389 (BAP 9th Cir. 2004).

Debtors move for sanctions in the amount of \$5,000.00 for compensatory damages and attorney fees and \$5,000 for punitive damages. The exact date of when the Creditors became aware of the Debtor's bankruptcy filing is contested between the parties; however, it is undeniable that the Creditor's state court counsel had knowledge of the bankruptcy petition on November 23, 2020. Dkt. No. 60 Debtors' Exhibit B. The Creditors emailed the Debtors about the prepetition debt they owed the

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, September 1, 2021

Hearing Room 302

10:30 AM

CONT...

Gregory Scott Caul and Amber Marie Caul

Chapter 7

Creditors on December 3, 2020 and attached a 15-day notice to pay or quit. Dkt. No. 60 Debtors' Exhibit C. On December 4, 2020, Debtors' attorney emailed the Creditors informing them that the Creditors' actions violated the automatic stay and if the Creditors did not cease and desist their activities. Dkt. No. 60 Debtors' Exhibit D. The Court granted relief from stay for the Creditors to regain possession of the property, but they were not permitted to pursue collection efforts as to prepetition debt. See Dkt No 33.

On February 20, 2021, the Creditors emailed the Debtors again. Dkt. No. 60 Debtors' Exhibit E. The email initially acknowledges that prepetition debt will be determined by the Court but then proceeds to discuss a SB91 Landlord Rent Compensation program. According to the Creditor's email, the Debtors were required to pay 25% of the rent owed by June 30, 2021 in order to qualify for the landlord to be compensated through this program. The Creditors go on to list the total amount of rent the Debtors owed which includes the prepetition debts. This email effectively was trying to collect a portion of the Debtors' missed rent payments which included a substantial amount of prepetition debt.

The Creditors again emailed the Debtors on February 25, 2021 stating that past rents will not go away and that they need "to work together to resolve the unpaid rents from April 2020 to February 2021. Dkt. No. 60 Debtors' Exhibit H. On March 14, 2021, the Creditors emailed the Debtors a notice of balance due which includes prepetition rent. Dkt. No. 60 Debtors' Exhibit G. On March 27, 2021, the Creditors emailed the Debtors again regarding the landlord rent compensation program. Dkt. No. 60 Debtors' Exhibit H. On March 28, 2021, the Creditors emailed the Debtors about assisting the Creditors with another rent relief program and if the Debtor cooperate then 20% of the rent would be waived. Dkt. No. 60 Debtors' Exhibit I. The Debtors' counsel emailed the Creditors again informing them of that their actions violate the automatic stay. Dkt. No. 60 Debtors' Exhibit J.

The Creditors were aware of the Debtors' bankruptcy petition and still intentionally emailed the Debtors about collecting at least some portion of the prepetition debt. Their intent is irrelevant for purposes of this motion. Further, the order granting relief from stay only allowed the Creditors to pursue regaining possession of the property and forbid them from seeking to collect prepetition debts. Accordingly, the Creditors willfully violated the automatic stay and thus Debtors are

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, September 1, 2021

Hearing Room 302

10:30 AM

CONT... Gregory Scott Caul and Amber Marie Caul

Chapter 7

entitled to actual damages and attorneys fees and costs.

Creditors attack the Debtors' version of events. Much of the Creditors' opposition focuses on the events leading up the state court judgment and the repercussions of the Debtors filing for bankruptcy – that the judgment had to be vacated and the Creditors had to commence a new unlawful detainer case after relief from stay was granted. These are not the actions that are the focal point of this motion. The actions at the heart of the motion are the Creditors repeated emails attempting to collect prepetition rent for which the Creditors claim are technically post-petition rents because the Covid 19 moratoria are still in effect. This position is wrong for two reasons. First, the moratoria in effect relate to eviction and not the payment of rent. The eviction moratoria relate to not being able to remove tenants for the non-payment of rent, it does not excuse or postpone rent payments – two very different things. See California Assembly Bill No. 3088 & 832. Rent is still due at the time agreed on by parties, which means most of the Creditors claim is for prepetition debt. Second, in the Ninth Circuit, when determining when a claim arose, we use the "fair contemplation" test. ZiLOG, Inc. v. Corning (In re ZiLOG, Inc.), 450 F.3d 996, 1000 (9th Cir. 2006); see also Baroni v. Wells Fargo Bank, N.A. (In re Baroni), 2017 Bankr. LEXIS 1962, * 10 (BAP 9th Cir. 2017). Under it, "a claim arises when a claimant can fairly or reasonably contemplate the claim's existence even if a cause of action has not yet accrued under nonbankruptcy law." In re Castellino Villas, 836 F.3d 1028, 1034 (9th Cir. 2016). Most of the rent the Creditors refer to in their emails can be fairly contemplated to have arose the months they became due. This means that most of the rent that the Creditors' emails refer to are prepetition.

There is no need to address the issue of regarding the Creditors' lack of declaration made under the penalty of perjury because Creditors filed another objection with the declaration attached and the exhibits and Creditors' arguments do not absolve them of the fact they violated the automatic stay as to the emails. Additionally, the Court will not address the Creditors' request for fees and punitive damages because they have not been properly sought by way of a motion – seeking this type of award in an objection is improper. Further, the basis for these awards appears to have some overlap with relief sought in the Creditors' adversary proceeding and should be addressed within the context of that case.

Debtors also seek an award for punitive damages. Punitive damages are only

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, September 1, 2021

Hearing Room 302

10:30 AM

CONT... Gregory Scott Caul and Amber Marie Caul

Chapter 7

awarded "in appropriate circumstances." 11 U.S.C. § 362(k)(1). Punitive damages for violation of the automatic stay are limited to situations where a creditor engaged in "egregious, intentional misconduct." McHenry v. Key Bank (In re McHenry), 179 B.R. 165, 168 (B.A.P. 9th Cir. 1995); see also In re Bloom, 875 F.2d at 224 (9th Cir. 1989) (observing that the court has "traditionally been reluctant to grant punitive damages absent some showing of reckless or callous disregard for the law or rights of others."). Debtors believe that punitive damages are warranted in this case because of what they believe to be ongoing harassment by the Creditors. Not only have the Creditors emailed the Debtors regarding prepetition debts but they have filed personal identifiable information on the docket on several times and in their amended complaint in the adversary proceeding.

While it is true that there have been several issues with the Creditors submitting documents with Debtors' PII but the Creditors are proceeding pro se and there are orders for protective orders available to protect PII. The issue with the amended complaint can be resolved relatively easily. While it may be annoying, this combined with the string of emails does not warrant punitive damages. That being said the Creditors need to be careful and correct any documents with PII in them by way of a motion for a protective order. If the Creditors continue to submit documents with PII on them then the Court may sanction them at a later date for any further behavior. Additionally, the Debtors have not submitted evidence suggesting that violation of the automatic stay is ongoing as of this date. Accordingly, an award for punitive damages is unnecessary at this time.

For these reasons the Court GRANTS the Debtors' motion for an award for compensatory damages and attorneys' fees and costs and denies an award for punitive damages. The compensatory damages should be submitted with the order.

Appearance Required.

Party Information

Debtor(s):

Gregory Scott Caul

Represented By
Kevin T Simon
David Brian Lally

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, September 1, 2021

Hearing Room 302

10:30 AM

CONT... Gregory Scott Caul and Amber Marie Caul

Chapter 7

Joint Debtor(s):

Amber Marie Caul

Represented By
Kevin T Simon
David Brian Lally

Movant(s):

Gregory Scott Caul

Represented By
Kevin T Simon
Kevin T Simon
David Brian Lally
David Brian Lally

Amber Marie Caul

Represented By
Kevin T Simon
David Brian Lally

Trustee(s):

David Seror (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, September 1, 2021

Hearing Room 302

11:00 AM

1:18-10313 Harold H Choe

Chapter 7

Adv#: 1:20-01008 Weil v. Kim et al

#17.00 Status Conference Re: Complaint
for Avoidance and Recovery of
Fraudulent Transfer.

fr. 4/1/20, 10/7/20, 1/13/21, 4/21/21

Docket 1

***** VACATED *** REASON: Stipulation dismissing adversary (eg)**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Harold H Choe

Represented By
Young K Chang

Defendant(s):

John Kim

Pro Se

Lucy Kim

Pro Se

Plaintiff(s):

Diane C Weil

Represented By
Anthony A Friedman

Trustee(s):

Diane C Weil (TR)

Represented By
Anthony A Friedman

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, September 1, 2021

Hearing Room 302

11:00 AM

1:18-10313 Harold H Choe

Chapter 7

Adv#: 1:20-01009 Weil v. Kim et al

#18.00 Status Conference Re: Complaint
for Avoidance and Recovery of Fraudulent
Transfer

fr. 4/1/20, 10/7/20, 1/13/20, 4/21/21

Docket 1

***** VACATED *** REASON: Stipulation dismissing adversary (eg)**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Harold H Choe

Represented By
Young K Chang

Defendant(s):

Brian Kim

Pro Se

Emily Kim

Pro Se

Brian's Shave Ice Two, Inc.

Pro Se

Plaintiff(s):

Diane C. Weil

Represented By
Anthony A Friedman

Trustee(s):

Diane C Weil (TR)

Represented By
Anthony A Friedman

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, September 1, 2021

Hearing Room 302

11:00 AM

1:18-11869 Albert Lee

Chapter 7

Adv#: 1:19-01142 PCB Debt LLC v. Lee

#19.00 Status Conference Re: Second Amended
Complaint to Revoke Defendant's
Discharge under 11 USC Sec. 727

fr. 8/19/20

Docket 31

Tentative Ruling:

In light of the modified scheduling order entered on July 28, 2021, this status conference will be continued to **March 3, 2022 at 11 am** to be heard with the pretrial conference.

NO APPEARANCE IS NECESSARY on September 1, 2021

Party Information

Debtor(s):

Albert Lee

Represented By
M Teri Lim

Defendant(s):

Albert Lee

Represented By
Kurt Ramlo

Plaintiff(s):

PCB Debt LLC

Represented By
George T Busu
James E Till
Bryan King Sheldon

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Howard Camhi

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, September 1, 2021

Hearing Room 302

11:00 AM

CONT...

Albert Lee

Peter A Davidson
Byron Z Moldo

Chapter 7

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, September 1, 2021

Hearing Room 302

11:00 AM

1:18-11965 Ian Jacoby

Chapter 7

Adv#: 1:18-01117 Williams v. Jacoby

#20.00 Pre trial conference re complaint for:
willful and malicious injury

fr. 1/9/19, 10/23/19, 1/15/20; 3/11/20, 9/2/20,
3/31/21

Docket 1

Tentative Ruling:

Having reviewed the status report filed on August 19, 2021, the Court finds cause to continue this adversary status conference to **March 2, 2022, at 11:00 a.m.**, to provide time for the appeal to be completed.

APPEARANCES WAIVED ON 9/1/21

Party Information

Debtor(s):

Ian Jacoby

Represented By
Andrew Goodman
Vincent V Frounjian

Defendant(s):

Ian Jacoby

Pro Se

Plaintiff(s):

Garrett Williams

Represented By
Lazaro E Fernandez

Trustee(s):

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, September 1, 2021

Hearing Room 302

11:00 AM

1:19-10726 Victoria Kristin Burak

Chapter 7

Adv#: 1:19-01111 Coha et al v. Burak

#21.00 Pre-trial Conference re: Complaint objecting to discharge of debtor based upon false pretenses, false representations, actual fraud

fr. 6/2/20; 10/7/20; 3/17/2, 5/19/21; 8/4/21

Docket 12

Tentative Ruling:

NO APPEARANCE REQUIRED ON SEPT. 1 BECAUSE SIGNED STIPULATION FOR DISMISSAL WAS FILED.

PLAINTIFF MUST UPLOAD DISMISSAL ORDER TO LOU

Party Information

Debtor(s):

Victoria Kristin Burak

Represented By
R Grace Rodriguez

Defendant(s):

Victoria Kristin Burak

Represented By
R Grace Rodriguez

Plaintiff(s):

Loretta M Coha

Represented By
James W Bates

Equity Trust Company, Custodian

Represented By
James W Bates

Trustee(s):

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, September 1, 2021

Hearing Room 302

11:00 AM

CONT... Victoria Kristin Burak

Chapter 7

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, September 1, 2021

Hearing Room 302

11:00 AM

1:20-11215 David Mor

Chapter 7

Adv#: 1:20-01084 First Data Merchant Services, LLC v. Mor

#22.00 Status Conference Re:
Complaint to Determine Debt to be
Non-Dischargeable

fr. 12/16/20; 12/18/20; 7/7/21

Docket 1

***** VACATED *** REASON: Adv. was dismissed and case was closed.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

David Mor

Represented By
Stephen S Smyth
William J Smyth

Defendant(s):

David Mor

Pro Se

Plaintiff(s):

First Data Merchant Services, LLC

Represented By
Allan Herzlich

Trustee(s):

Diane C Weil (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, September 1, 2021

Hearing Room 302

11:00 AM

1:21-10079 Ara Eric Hunanyan

Chapter 7

Adv#: 1:21-01036 Hunanyan v. Rosenthal et al

#23.00 Status Conference Re Complaint for:
1 - Objection to Proof of Claim #4;
2 - Avoidance and Recovery of Preferential
Fraudulent Transfer of Property;
3 - Avoidance of Lien on Sherman Way
Property in the Amount of \$130,700.00

Docket 1

***** VACATED *** REASON: Amended Complaint was filed - New S/C set
for 9/22/21 at 11:00 a.m. If**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ara Eric Hunanyan

Represented By
Stephen L Burton

Defendant(s):

Lisa Rosenthal

Pro Se

Hovik Meguerian

Pro Se

Lucy Meguerian

Pro Se

Plaintiff(s):

Ara Eric Hunanyan

Pro Se

Trustee(s):

Nancy J Zamora (TR)

Represented By
Ori S Blumenfeld
Jeremy Faith

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, September 1, 2021

Hearing Room 302

1:00 PM

1:20-10069 Shawn Sharon Melamed

Chapter 7

Adv#: 1:20-01068 GOLDMAN v. Dardashti et al

#24.00 Motion For Summary Judgment

fr. 6/2/21,6/30/21

Docket 37

Tentative Ruling:

The ruling has not yet been issued, but should be shortly after this continued hearing. The court would like the parties to address **briefly** the question of whether the first and second cause of action should be treated differently under Mehrtasch because of the distinctions made in Stadtmueller v. Sarkisian, 619 B.R. 236 (BAP 9th Cir 2020), aff'd, 2021 US App LEXIS 22529(9th Cir. July 29, 2021). Does the actual fraud cause of action depend on whether there was equity, or just the constructive fraud cause of action?

Secondly, I would like the parties to address whether there is any basis to impose the *in pari delicto* doctrine in opposition to a resulting trust theory. Defendant cites again to setion 541, but the resulting trust theory is at common law and Fidelity national and Valente do not support this suggestion.

Party Information

Debtor(s):

Shawn Sharon Melamed

Represented By
Michael F Chekian

Defendant(s):

Shawn Dardashti

Represented By
Michael H Weiss

DOES 1 - 20, Inclusive

Pro Se

Joint Debtor(s):

Jenous Tootian

Represented By
Michael F Chekian

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, September 1, 2021

Hearing Room 302

1:00 PM

CONT... Shawn Sharon Melamed

Chapter 7

Plaintiff(s):

AMY L GOLDMAN

Represented By
Scott E Gizer

Trustee(s):

Amy L Goldman (TR)

Represented By
Scott E Gizer

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, September 1, 2021

Hearing Room 302

1:00 PM

1:21-10554 Elsa V. Ramirez

Chapter 7

Adv#: 1:21-01040 Upstream Capital Investments LLC v. Ramirez

#25.00 Defendant Elsa Ramirez's Motion to Dismiss
Adversary Complaint Pursuant to FRCP 12(b)(6),
Incorporated into these Proceedings VIA
F.R.B.P. 7012

Docket 6

Tentative Ruling:

On March 31, 2021, Elsa Ramirez ("Defendant") filed a chapter 7 bankruptcy case. Upstream Capital Investments LLC ("Plaintiff") commenced an adversary proceeding on July 9, 2021. The complaint seeks relief under 11 U.S.C. 523(a)(2) & (6).

The complaint alleges that on March 13, 2006, Defendant's former husband Paul Edmeier was hired as Chief Financial Officer for a business owned by Melvyn Bernie ("Judgment Creditor"), 1928 Jewelry. In that position for seven years, Mr. Edmeier's job responsibilities encompassed 1928 Jewelry's finances, as well as financial oversight over all of Judgment Creditor's businesses, including overseeing all companies' accounting departments, and all of the companies' respective payables and receivables. During this time, Defendant was Mr. Edmeier's mistress. Defendant was also employed by Mr. Edmeier as an accounting clerk for 1928 Jewelry and had access to the monthly accounting reports for Judgment Creditor. Plaintiff alleges that as early as January 2009, Defendant along with Mr. Edmeier devised and engaged in a scheme to defraud and steal from Judgment Creditor, and acted in furtherance of that scheme. The Plaintiff believes that the Defendant embezzled or stole in excess of \$260,000.00 from the Judgment Creditor

On February 14, 2014, Judgment Creditor filed suit against Defendant in the Superior Court of California. On June 9, 2015, default judgment for fraud was entered in the civil case against Defendant in the amount of \$288,191.00, plus prejudgment interest in the amount of \$1,922.70, with interest thereon at the rate of ten percent (10%) per annum from the entry of judgment until all paid. The amount currently due is approximately \$455,057.12. The Judgment Creditor filed an abstract of judgment

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, September 1, 2021

Hearing Room 302

1:00 PM

CONT...

Elsa V. Ramirez

Chapter 7

to record a judicial lien against the Defendant's property on February 22, 2019. The Judgement Creditor transferred and assigned the Plaintiff all of his rights and interest in the Defendant's debt.

The Defendant filed a motion to dismiss this adversary proceeding and the Plaintiff has objected.

Standard:

A motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure, made applicable to this proceeding by Rule 7012(b) of the Federal Rules of Bankruptcy Procedure, challenges the sufficiency of the allegations set forth in the complaint. The complaint must contain a "short and plain statement of the claim," which shows that the plaintiff is entitled to relief. Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (citation omitted).

A dismissal under Rule 12(b)(6) may be appropriate when the complaint lacks a "cognizable legal theory" or "sufficient facts alleged under a cognizable legal theory." Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1988) (citation omitted).

The Court must construe the complaint in the light most favorable to the plaintiff and accept all well-pleaded factual allegations as true. Johnson v. Riverside Healthcare Sys., 534 F.3d 1116, 1122 (9th Cir. 2008) (citation omitted). However, the Court is not bound by conclusory statements, statements of law, or unwarranted inferences cast as factual allegations. Twombly, 550 U.S. at 555; Clegg v. Cult Awareness Network, 18 F.3d 752, 754-55 (9th Cir. 1994) (citations omitted).

Although "detailed factual allegations" are not required, a plaintiff must provide more than mere "labels and conclusions" or "formulaic recitation[s] of the elements of a cause of action" in order to provide grounds for relief. Twombly, 550 U.S. at 555 (2007) (citations omitted). Rather, a complaint "must contain either direct or inferential allegations respecting all the material elements necessary to sustain recovery under *some* viable legal theory." Id. at 562 (emphasis in original) (citations omitted).

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, September 1, 2021

Hearing Room 302

1:00 PM

CONT...

Elsa V. Ramirez

Chapter 7

In Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009), the Supreme Court elaborated on the Twombly standard: "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." (internal quotation marks and citations omitted). Facial plausibility exists when the plaintiff includes "factual content that allows the court to draw [a] reasonable inference that the defendant is liable for the misconduct alleged." Id. (citations omitted).

Under the Twombly and Iqbal standard, courts may use a two-pronged approach. First, courts should identify pleadings which are no more than "legal conclusion[s]" and therefore "not entitled to the assumption of truth." Id. at 680. (internal quotation marks and citations omitted). Legal conclusions must be supported by factual allegations. Id. at 678. Second, courts should determine whether the complaint's factual allegations "plausibly suggest an entitlement to relief," assuming the veracity of the well-pled factual allegations. Id. at 681.

When considering a 12(b)(6) motion to dismiss, the Court generally may not consider material beyond the pleadings, Fort Vancouver Plywood Co. v. United States, 747 F.2d 547, 552 (9th Cir.1984), unless properly submitted with the complaint. Amfac Mortg. Corp. v. Ariz. Mall of Tempe, Inc., 583 F.2d 426, 429-30 (9th Cir.1978). The Court may consider "allegations contained in the pleadings, exhibits attached to the complaint, and matters properly subject to judicial notice." Swartz v. KPMG LLP, 476 F.3d 756, 763 (9th Cir. 2007).

"In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally." Fed. R. Civ. P. 9(b). "Averments of fraud must be accompanied by 'the who, what, when, where, and how' of the misconduct charged." Vess v. Ciba-Geigy Corp. USA, 317 F.3d 1097, 1106 (quoting Cooper v. Pickett, 137 F.3d 616, 627 (9th Cir. 1997)). A plaintiff must plead enough facts to give defendants notice of the time, place, and nature of the alleged fraud together with an explanation of the statement and why it was false or misleading. See Vess at 1107.

Fraud pleading must be sufficient to give defendants notice of the circumstances surrounding an allegedly fraudulent statement. See In re GlenFed, Inc.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, September 1, 2021

Hearing Room 302

1:00 PM

CONT...

Elsa V. Ramirez

Chapter 7

Sec. Litig., 42 F.3d 1541, 1547 (9th Cir. 1994) (superseded by statute on other grounds as stated in Ronconi v. Larkin, 253 F.3d 423, 428-29 (9th Cir. 2001)). Those circumstances must "be specific enough to give defendants notice of the particular misconduct . . . so that they can defend against the charge and not just deny that they have done anything wrong." Vess, 317 F.3d at 1106 (quoting Bly-Magee v. California, 236 F.3d 1014, 1019 (9th Cir. 2001)). "The complaint must specify such facts as the times, dates, places, benefits received, and other details of the alleged fraudulent activity." Neubronner v. Milken, 6 F.3d 666, 672 (9th Cir. 1993). "Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally." Fed. R. Civ. P. 9(b). The Rule 9(b) pleading standard applies to all averments of fraud in federal court, irrespective of whether the cause of action requires a plaintiff to plead or prove fraud. See Vess, 317 F.3d at 1103-04.

In practice, a complaint ... must contain either direct or inferential allegations respecting all the material elements necessary to sustain recovery under some viable legal theory." Twombly, 550 U.S. at 562, quoting Car Carriers, Inc. v. Ford Motor Co., 745 F.2d 1101, 1106 (7th Cir. 1984).

The Defendant asserts that the complaint fails to meet the pleading standards of Federal Rule of Civil Procedure 8 and 9, which are incorporated in Federal Rule of Bankruptcy Procedure 7008 and 7009. The Plaintiff believes the standards have been satisfied. There complaint has two causes of action for nondischargeability, 11 USC § 523(a)(2)(A) and 11 USC § 523(a)(6).

Section 523(a)(2)(A):

Section 523(a)(2)(A) excepts from discharge any debt "to the extent obtained by false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition." 11 U.S.C. §523(a)(2)(A). Ninth Circuit case law confirms that the elements of fraud under California law match the ones under § 523(a)(2)(A). Younie v. Gonya (In re Younie), 211 B.R. 367, 373-74 (B.A.P. 9th 1997) ("The elements of §523(a)(2)(A) 'mirror the elements of common law fraud' and match those for actual fraud under California law."). See also Baldwin v. Kilpatrick (In re Baldwin), 245 B.R. 131, 134 (B.A.P. 9th Cir. 2000). To show actual fraud the plaintiff must prove that 1) defendant made a misrepresentation, concealment, or non-disclosure of a material fact; 2) defendant had knowledge that

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, September 1, 2021

Hearing Room 302

1:00 PM

CONT...

Elsa V. Ramirez

Chapter 7

what he was saying was false; 3) defendant intended to induce plaintiff's reliance; 4) plaintiff justifiably relied; and 5) plaintiff suffered damage as a result. In re Slyman, 234 F.3d 1081, 1085 (9th Cir. 2000); see also Stennis v. Davis (In re Davis), 486 B.R. 182, 193-92 (Bankr. N.D. Cal. 2013)

Here, the complaint does not address that the Defendant made a false statement, concealment, or non-disclosure of material fact, that she intended to induce the Judgement Creditor's reliance and that the Judgment Creditor relied on statements. Further, the terms scheme, defraud, embezzlement are legal conclusions not based on factual allegations. The only factual allegations relating to the Defendant's action are that she received cash and other goods for no or little consideration. Accordingly, the Plaintiff has not satisfied the well plead complaint standard for section 523(a)(2)(A).

Section 523(a)(6):

A debt is nondischargeable under § 523(a)(6) if it results from debtor's willful and malicious injury to another or to the property of another. There are three elements in order to succeed in an Section 523(a)(6) action:(1) willfulness; (2) maliciousness and (3) injury. Smith v. Entrepreneur Media, Inc. (In re Smith) 2009 Bankr. LEXIS 4582, *20 (9th Cir. BAP 2009). The Supreme Court in Kawaauhau v. Geiger (In re Geiger), 523 U.S. 57, 118 S.Ct. 974, 140 L. Ed. 2d 90 (1998), made clear that for section 523(a)(6) to apply, the actor must intend the consequences of the act, not simply the act itself." Ormsby v. First American Title Co. of Nevada (In re Ormsby), 591 F. 3d 1199, 1206 (9th Cir. 2010). Both willfulness and maliciousness must be proven to prevent discharge of the debt. Id. But, reckless or negligent acts are not sufficient to establish that a resulting injury falls within the category of willful and malicious injuries under §523(a)(6). Kawaauhau v. Geiger, 523 U.S. at 64.

Willfulness means intent to cause injury. Kawaauhau v. Geiger, 523 U.S. at 61. "The injury must be deliberate or intentional, 'not merely a deliberate or intentional act that leads to injury.'" In re Plyam, 530 B.R. 456, 463 (9th Cir. BAP 2015) (quoting Kawaauhau v. Geiger, 523 U.S. at 61). Recklessly inflicted injuries, covering injuries from all degrees of recklessness, do not meet the willfulness requirement of § 523(a)(6). In re Plyam, 530 B.R. at 464. Reckless conduct requires an intent to act instead of an intent to cause injury. Id. Therefore, the willful injury requirement "... is met only when the debtor has a subjective motive to inflict injury or

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, September 1, 2021

Hearing Room

302

1:00 PM

CONT...

Elsa V. Ramirez

Chapter 7

when the debtor believes that injury is substantially certain to result from his own conduct." Carillo v. Su (In re Su), 290 F.3d 1140, 1142 (9th Cir. 2002).

The "malicious" injury requirement under 11 U.S.C. § 523(a)(6) is separate from the "willful" requirement, and both must be present for a claim under § 523(a)(6). Carillo v. Su (In re Su), 290 F.3d 1146 (9th Cir. 2002). A malicious injury is one that involves; "(1) a wrongful act, (2) done intentionally, (3) which necessarily causes injury, and (4) is done without just cause or excuse." Petralia v. Jercich (In re Jercich), 238 F.3d 1202, 1209 (9th Cir. 2001). "Malice may be inferred based on the nature of the wrongful act," but to make such an inference, willfulness must be established first. Ormsby v. First Am. Title Co. (In re Ormsby), 591 F.3d 1199, 1207 (9th Cir. 2010). When analyzing the plain meaning of "malice," "it is the wrongful act that must be committed intentionally rather than the injury itself." Jett v. Sicroff (In re Sicroff), 401 F.3d 1101, 1106 (9th Cir. 2005).

Here, the problem with the complaint relates with the intent elements of alleged scheme. As used in the complaint, "scheme" appears to be too broad of a term to satisfy the requirements under section 523(a)(6). The elements of willfulness and malicious require a specific intent to cause harm. Allegations of embezzlement or stolen are legal conclusions that are not supported with factual allegations. The only factual allegations in the complaint relating to the Defendant's actions are receiving cash and other goods from Mr. Edmeier for no or little consideration, which does not infer the required intent. Without providing some insight as to the Defendant's alleged role in this scheme it is difficult to ascertain whether the complaint satisfies the requirements under section 523(a)(6).

Rule 15(a)(2) of the Federal Rules of Civil Procedure states that "[t]he court should freely give leave [to amend] when justice so requires." F.R.Civ.P. 15(a)(2).23 If a complaint lacks facial plausibility, a court must grant leave to amend unless it is clear that the complaint's deficiencies cannot be cured by amendment. Gompper v. VISX, Inc., 298 F.3d 893, 898 (9th Cir. 2002). Based on the exhibits attached to the complaint suggests that the deficiencies can be cured by amending the complaint.

For the previously articulated, the motion is GRANTED with leave to amend within 30 days of the hearing.

Appearance Required

Party Information

Debtor(s):

Elsa V. Ramirez

Represented By

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, September 1, 2021

Hearing Room 302

1:00 PM

CONT... Elsa V. Ramirez

Chapter 7

Ahren A Tiller

Defendant(s):

Elsa V. Ramirez

Represented By
Ahren A Tiller

Plaintiff(s):

Upstream Capital Investments LLC

Represented By
Lynda E Jacobs

Trustee(s):

Diane C Weil (TR)

Pro Se